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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/709,392	OSWALD ET AL.	
	Examiner	Art Unit	
	MADHU KHANNA	4117	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 April 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-76* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-76* is/are rejected.

7)☐ Claim(s) _ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *4/22/05, 4/22/05 & 12/5/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The attempt to incorporate subject matter into this application by reference to "Distributed System and Methodology for Delivery of Media Content" (Docket No. ALIO/0001.01) and "System and Methodology for Distributed Delivery of Online Content in Response to Client Selections from an Online Catalog" (Docket No. ALIO/0001.03) are ineffective because applicant has failed to provide an application serial number.

2. The uses of trademarks such as Microsoft Windows, Linux, Macintosh, Sun Solaris, UNIX and FreeBSD, Intel, HP, Bluetooth, IBM, Sun Microsystems, and Napster have been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

3. Claims 42 and 69 are objected to because of the following noted informality: A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n). Claims 42 and 69 do not comply. Appropriate correction is required.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory

double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 54-76 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 56-85 of Application No. 10/709,391 in view of Son et al. (US 2003/0126277) (referred to as Son hereafter).

Claims 54-76 of instant application are an obvious variation of application no. 10/709,391 (referred to as '391). Specifically in this case, claim 54 of the application has substantially the same element(s)/limitation(s) of claim 56 of '391.

The difference between the noted claim in the application and the noted claim in '391 is that the application further contains the limitations of: *selecting a particular media item to be delivered to a first device based on the media items determined to be available on the first device; and identifying at least one second device having the particular media item to be delivered to the first device.*

These differences between these claims of '391 and claims 54-76 of the instant application is not suffice to render the invention of claims 55-76 of the application patentably distinct in view of the secondary reference (i.e. Son) discussed below and therefore substantially the same invention and/or a mere obvious variation of application '391.

Although the conflicting claims are not identical, they are not patentable distinct from each other for the following reasons (i) the differences noted would have been obvious to one of ordinary skill at the time the invention was made in view of the teachings of the secondary reference Son.

Son teaches the client begins a video play service and investigates whether video data to be played is stored in its local disk [0033]. If the video data is not stored therein, the client calls for video data catalog to a server, and investigates whether information on the corresponding video data is in the catalog. If there is information on the corresponding video data in the catalog, it calls for transmission of the corresponding video data to a client where the corresponding video data is stored [0033].

It would have been obvious to one of ordinary skill in the art at the time of the claimed invention given the suggestion of Oswald et al. for transferring media items in a peer-to-peer network, the teachings of Son for investigating whether a media item is available on the client device before requesting it from another client, and if it is not stored on the local disk, identifying a client from which the corresponding data can be transmitted from. One would be motivated to investigate if a particular media item is stored on the device before requesting it to be transferred from another source because doing so would eliminate a needless transfer of data, thereby conserving the use of bandwidth resources and reducing the use of memory on the device by not storing duplicate copies of the media item. Likewise, it would be obvious in a peer-to-peer environment to determine the availability and location of a requested item on the

network because doing so would be necessary in order to select an appropriate device to transfer the file to a requesting device in a peer-to-peer network.

Therefore, claim 54 of the instant application is rejected over claim 56 of '391 in view of Son. Furthermore, it is noted that claims 55-76 of the application are substantially the same as claims 59, 60, 61, 68, 72, 73, 75, and 76 of application '391.

Claim Rejections - 35 USC § 101

6. Claim 24 is rejected under 35 U.S.C. §101 which reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 24 is rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

In this case, computer-related inventions whether descriptive or functionally descriptive material are non-statutory categories when claimed as descriptive material *per se* (see *Warmerdam, 33 F.3d at 1360 USPQ2d at 1759)*, falling under the "process" category (i.e. inventions at that consist of a series of steps or acts to be performed). See 35 U.S.C. 100(b) ("The term process means, art, or method, and includes a new of a known process, machine, manufacture, composition of matter or material"). Functional descriptive material: "data structures" representing descriptive material *per se* or computer program representing computer listing *per se* (i.e. software per se) when embodied in a computer-readable media are still not statutory because they are not capable of causing functional change in the computer. However, a claimed computer-

readable *storage* medium encoded with a data structure, computer listing or computer program, having defined structural and functional interrelationships between the data structure, computer listing or computer program and the computer software and hardware component, which permit the data structure's, listing or program's functionality to be realized, is statutory (see MPEP §2106).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-2, 5-6, 8, 11, 13-14, 17, 19-25, 28, 31, 33-34, 37, 39, 40, 43-44, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinpeter III et al. (US

Patent # 6,907,463) (referred to as Kleinpeter hereafter) in view of Chiu (Pub. No.: US 2003/0158958) (referred to as Chiu hereafter).

Regarding claim 1, Kleinpeter teaches a method for distributing media content to clients having peer-to-peer connectivity, the method comprising:

hosting an online catalog having a selection of media items available (column 3 lines 40-41);

responsive to the online catalog, receiving from each client (users) a prioritized list of media items desired to be received for use (column 1 lines 58-60);

based on the prioritized lists received from the clients (requested files) and based on where various media items reside (locations) (column 1 lines 60-64), determining a schedule (optimal repository user) for transferring media items (column 6 lines 57-60); and

transferring the media items pursuant to the schedule, including transferring at least some of the items between clients (agents) using peer-to-peer connectivity (column 3 lines 64-66).

However Kleinpeter does not teach a central repository or explicitly disclose where at least some of the media items have been previously transferred from the central repository to some of the clients.

Chiu teaches a central repository (102 of FIG. 1), wherein at least some of the media items (content item) have already been previously transferred from the central

repository (Content DB, 102 of FIG.1) to some of the clients (end-user system, 130 of FIG. 1) [0015];

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter for reducing bandwidth requirements of a source server in a file sharing environment, the teachings of Chiu for using user devices as network storage for distributing video-on-demand services. One of ordinary skill in the art of peer-to-peer sharing would recognize that additional distribution of files not requested by a user would increase the availability of the file on the network. One would be motivated to combine these teaching because in doing so, files determined to be popular based on user history would be constantly available to requesting users and reduce the amount of required queuing of requests.

Regarding claim 2, comprising:

upon completion of transfer of a particular media item at a given client (upon completion of the content download and verification), indicating at the client that the particular media item may be purchased for use (access of the content in local storage by this end-user) (Chiu: [0015]).

Regarding claim 5, wherein the hosting step includes pre-loading media items (downloads content items) on client devices supplied to users (end-user system) (Chiu: [0015]).

Regarding claim 6, wherein said step of pre-loading media items (downloads content items) (Chiu: [0015]) includes pre-loading particular media items based upon user requests for particular media items (system utilizes user-access history to pre-select or recommend content available on SAN) (Chiu: [0017]).

Regarding claim 8, wherein the transferring step includes transferring the media items (content items) to client playback devices (e.g. DVD player) (Chiu: [0015]).

Regarding claim 11, wherein the determining step includes determining a schedule that maximizes transfers between clients that can occur within a reasonable period of time (fastest speed connection) (Kleinpeter: column 6 lines 20-25).

Regarding claim 13, wherein the transferring step includes transferring the media items using broadband connectivity (a network architecture to enable a broadband service, such as a video-on demand service, in a peer-to-peer network environment) (Chiu: [0003]).

Regarding claim 14, wherein each media item is transferred in encrypted format (the content can be encrypted or watermarked) (Chiu: [0007]).

Regarding claim 17, wherein the determining step includes:

determining which media items (specific file) may be transferred from one client (agent) to another (Kleinpeter: column 3 lines 60-63).

Regarding claim 19, wherein the hosting step includes providing caching space at a client for storing media items (content) not on the prioritized list of media items (content) requested by said client (Chiu: 436 of FIG. 4).

Regarding claim 20, wherein said determining step includes determining which media items need to be transferred (Chiu: pre-select or recommend content available on SAN, [0017]) from the central repository (Chiu: Content DB, 102 of FIG. 1) to said caching space at the client (Chiu: 436 of FIG. 4).

Regarding claim 21, wherein the transferring step includes transferring the media items (content items) using wireless connectivity (e.g. satellite) (Chiu: [0015]).

Regarding claim 22, wherein the transferring step includes checking the media items transferred for determining that they have not been corrupted during the transfer (a client may say the transfer was successful) (Kleinpeter: column 8 lines 66-67).

Regarding claim 23, a computer-readable medium (any type of digital memory management system) having processor-executable instructions for performing the method of claim 1 (Kleinpeter: column 4 lines 3-10).

Regarding claim 24, a downloadable set of processor-executable instructions (software agents) for performing the method of claim 1 (Kleinpeter: column 3 lines 17-25).

Regarding claim 25, this system claim comprises limitations substantially the same as those discussed on claim 1, same rationale of rejection is applicable.

Further including a server (central web server) for receiving from each client a prioritized list of media items (Kleinpeter: users of the intelligent agent provided by the present invention simply submit a list of requested files to a central web server, column 1 lines 58-60) desired to be received for playback (Chiu: request the content to, e.g. be played out now, [0004]);

a network, in communication with the server (agent server, executed on the network based computing system), for transferring the media items (shared files) pursuant to the schedule, including transferring at least some of the items (file requests) between clients (software agents) using peer-to-peer connectivity (direct connection between their respective computing systems) (Kleinpeter: column 3 lines 21-31); and

client devices (Chiu: end-users systems 130 and 138 of FIG. 1), in communication with the network (Chiu: SAN, 110 and 111 of FIG. 1), for storing and playing back transferred media items (Chiu: can request the content to, e.g., be played out now or later or to be stored onto an optical storage carrier such as a DVD-Video disk, [0004]).

Regarding claim 28, this system claim comprises limitations substantially the same as those discussed on claim 8, same rationale of rejection is applicable. Further including items (content) are transferred to the client playback devices for storage (Chiu: stored onto an optical storage carrier such as a DVD-Video disk, [0004]).

Regarding claim 31, this system claim comprises limitations substantially the same as those discussed on claim 11, same rationale of rejection is applicable.

Regarding claim 33, this system claim comprises limitations substantially the same as those discussed on claim 13, same rationale of rejection is applicable.

Regarding claim 34, this system claim comprises limitations substantially the same as those discussed on claim 14, same rationale of rejection is applicable.

Regarding claim 37, wherein the server (server group) determines which media items (file) may be transferred from one client (agent) to another (Kleinpeter: column 3 lines 60-63).

Regarding claim 39, this system claim comprises limitations substantially the same as those discussed on claim 21, same rationale of rejection is applicable.

Regarding claim 40, wherein the online catalog is accessible via an Internet browser program (web browser) (Kleinpeter: column 3 lines 35-41).

Regarding claim 43, wherein the client devices comprise set-top boxes (Chiu: initiates a transfer from the first end-user's device (e.g. a set-top-box), [0004]).

Regarding claim 44, wherein the set-top boxes (e.g. STBs) include hard disk storage (local storage (e.g., HDD)) and broadband connectivity (IP communication capabilities) (Chiu: consumer set-top boxes (STBs), which include local storage (e.g., HDD), high processing power, and IP communication capabilities, [0007]).

Regarding claim 53, wherein at least some of the client devices (computing systems) communicate with said network through a network connection (Kleinpeter: column 3 lines 20-25).

10. Claims 3, 7, 9, 15-16, 26, 29, 35-36, and 45-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinpeter-Chiu in view of Schleicher et al. (Pub. No: US 2002/0138576) (referred to as Schleicher hereafter).

Regarding claim 3, although Kleinpeter-Chiu teach a video-on demand peer-to-peer sharing of movies (Chiu: [0003]-[0004]),

Kleinpeter-Chiu do not explicitly disclose the transferring video and particularly audio media items.

Schleicher teaches wherein the selection of media items (content files) includes audio/video media items (audio files, video files, [0022]).

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter-Chiu for a reliable peer-to-peer sharing network, the teachings of Schleicher for generating revenue in the peer-to-peer delivery network. One would be motivated to combine these teaching because in doing so, transfer costs would be reduced and added security enforcing copyrights on a public network would be offered.

Regarding claim 7, wherein said step of pre-loading media items (Chiu: the user does not control the content stored on local storage and received from, e.g. database, [0016]) includes pre-loading particular media items based upon predicting media items likely to be needed (Schleicher: providers may then specify which users should be targeted for which types of marketing content, [0028]).

Regarding claim 9, wherein the determining step includes determining a schedule that minimizes bandwidth requirements (Schleicher: taking advantage of the idle bandwidth, [0013]).

Regarding claim 15, comprising:

receiving purchase instructions (billing information) from a given client (Schleicher: receives registration information entered by a user, which can include billing information, [0033]); and

in response to receiving the purchase instructions (Schleicher: when registration is complete, the user is notified and may then execute the P2P client application, [0033]), decrypting the particular media item for playback at the given client (Schleicher: when the file is received and authenticated, the user's public key may be used to decrypt the file, [0046]).

Regarding claim 16, comprising:

checking the given client's account status (Chiu: verification of a user's account and permission, [0005]) before decrypting the particular media item for playback at the given client (Schleicher: when the file is received and authenticated, the user's public key may be used to decrypt the file, [0046]).

Regarding claim 26, this system claim comprises limitations substantially the same as those discussed on claim 3, same rationale of rejection is applicable.

Regarding claim 29, this system claim comprises limitations substantially the same as those discussed on claim 9, same rationale of rejection is applicable.

Regarding claim 35, this system claim comprises limitations substantially the same as those discussed on claim 15, same rationale of rejection is applicable. Further including a module, responsive to the received payment instructions, for authorizing playback of the particular media item at the given client device (Chiu: any user who, e.g., wants to view the content will be presented with a pay-per-view dialog screen. Subsequently the user can decide whether to pay or not, [0005]).

Regarding claim 36, comprising:

a module (e.g. Conditional Access Module) for checking the given client's (user's) account status before authorizing playback of the particular media item at the given client device (Chiu: verification of a user's account and permission can be verified locally, e.g., by using a CAM, [0005]).

Regarding claim 45, wherein the central repository (databases) comprises a media server (server node) (Schleicher, [0022]).

Regarding claim 46, wherein the media server (server node) stores downloadable video media (video files) (Schleicher: [0022]).

Regarding claim 47, wherein the server (Schleicher: 12 of FIG. 1B) includes a customer management module (Chiu: e.g. Conditional Access Module) for tracking account status of each client (Schleicher: user database, 32 of FIG. 1B).

Regarding claim 48, wherein the server includes a key vault storing decryption keys (Schleicher: the user's public key and private key are stored in the certificate database, [0033]) that may be transferred to clients for playing back transferred media items (file) (Schleicher: the user's public key may be used to decrypt the file, [0046]).

Regarding claim 49, wherein the server checks account status of a client (user) (Schleicher: the server node receives registration information entered by the user, which can include billing information, [0033]) before issuing (generates) a decryption key to the client (user) (Schleicher: in response, the server node generates account information for the user, including a digital certificate that includes a public key and a private key, [0033]).

Regarding claim 50, wherein the server checks geographic location (demographic information) of a client before issuing (generates) a decryption key to the client (user) (Schleicher: [0033]).

11. Claims 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinpeter-Chiu-Schleicher in view of Perkes et al. (Pub. No.: US 2002/0194601) (referred to as Perkes hereafter).

Regarding claim 51, Kleinpeter-Chiu-Schleicher do not disclose each decryption key automatically expires after some period of time.

Perkes teaches wherein each decryption key automatically expires after some period of time (allows encryption keys to be regularly updated, [0217]).

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter-Chiu-Schleicher for a secure and reliable peer-to-peer sharing network, the teachings of Perkes for improved collecting, collating, organizing, analyzing and monetizing of information about a consumer's computer and peripheral device usage, while utilizing peer-to-peer broadcasting. One would be motivated to combine these teaching because doing so would enable providers and advertisers to deliver an increased volume of more refined, targeted content to more consumers while allowing users to utilize a wide range of peripherals and components connected to their computers.

Regarding claim 52, comprising:

television devices (e.g. HDTV), in communication with the client devices, for playing back transferred media items (Perkes: [0038]).

12. Claims 4, 10, 18, 27, 30, 38, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinpeter-Chiu in view of Son et al. (Pub. No.: US 2003/0126277) (referred to as Son hereafter).

Regarding claim 4, Kleinpeter-Chiu do not explicitly disclose the media items including various file types.

Son teaches wherein the selection of media items includes various file types (e.g. MPEG, AVI and ASF, [0021]).

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter-Chiu for a reliable peer-to-peer sharing network, the teachings of Son for streaming multimedia data by using a peer-to-peer method. One would be motivated to combine these teaching because in doing so, the requesting client has immediate access to a catalog of available items from the server and can determine that a requested file should be received from the server only if no other client stores the file, further ensuring less load on the server.

Regarding claim 10, wherein the determining step includes determining a schedule that minimizes transfers from the central repository (Son: if one of the clients does not store the video data, the first client receives the video data from the server, [0027]).

Regarding claim 18, wherein the determining step further comprises:

determining which media items (video data) need to be transferred from the central repository (server) to clients (Son: if one of the clients does not store the video data, the first client receives the video data from the server, [0027]).

Regarding claim 27, this system claim comprises limitations substantially the same as those discussed on claim 4, same rationale of rejection is applicable.

Regarding claim 30, this system claim comprises limitations substantially the same as those discussed on claim 10, same rationale of rejection is applicable.

Regarding claim 38, wherein the server determines (by communicating with the server) which media items (video data) need to be transferred from the central repository (server) to clients (Son: if one of the clients does not store the video data, the first client receives the video data from the server, [0027]).

Regarding claim 41, wherein the online catalog is accessible from the client devices (Son: the catalog stored in the server is transmitted to the client, [0031]).

Regarding claim 42, wherein the online catalog is accessible from the client devices (Son: the catalog stored in the server is transmitted to the client, [0031]) via a selected one of online connectivity (Son: between the server group and the client group, there are the Internet and access networks, [0022]) and a local database at the client devices (Son: client group includes a local network, [0022]).

13. Claims 12 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinpeter-Chiu in view of Perkes.

Regarding claim 12, Kleinpeter-Chiu do not disclose the determining step being based on storage available at each client for receiving media items.

Perkes teaches wherein the determining step is also based on storage available at each client (consumer's computer) for receiving media items (determine the storage availability, [0050]).

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter-Chiu for a reliable peer-to-peer sharing network, the teachings of Perkes for improved collecting, collating, organizing, analyzing and monetizing of information about a consumer's computer and peripheral device usage, while utilizing peer-to-peer broadcasting. One would be motivated to combine these teaching because doing so would enable providers and advertisers to deliver an increased volume of more refined, targeted content to more consumers while allowing users to utilize a wide range of peripherals and components connected to their computers.

Regarding claim 32, this system claim comprises limitations substantially the same as those discussed on claim 12, same rationale of rejection is applicable.

14. Claims 54-57, 59-65, and 67-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinpeter in view of Schleicher and in further view of Son.

Regarding claim 54, Kleinpeter teaches method for delivery of media content available on a plurality of devices having connectivity to one another, the method comprising:

determining media items (shared files) available on each of said plurality of devices having connectivity to one another (column 3 lines 25-32);

receiving priority lists from at least some of said plurality of devices (users of the intelligent agent simple submit a list of requested files, column 1 lines 58-60);

selecting a particular media item (file) to be delivered to a first device based on the priority lists (column 3 lines 44-46);

identifying at least one second device (user) having the particular media item (file) to be delivered to the first device (column 3 lines 48-51); and

transferring the particular media item (file) to the first device (agent 30A) from at least one second device (agent 30B) at which the particular media item is available (column 3 lines 64-66).

However, Kleinpeter does not explicitly disclose each priority list represents a prioritized list of media items requested at a particular device.

Schleicher teaches wherein each priority list represents a prioritized list of media items requested at a particular device (a priority level chosen for delivering the particular content, [0027]).

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter for a reliable peer-to-peer sharing network, the teachings of Schleicher for generating revenue in the peer-to-peer delivery network. One would be motivated to combine these teaching because in doing so, transfer costs would be reduced and added security enforcing copyrights on a public network would be offered.

However, Kleinpeter-Schleicher do not explicitly teach selecting a media item to be delivered to a first device based on media items determined to be available on the first device.

Son teaches selecting a particular media item to be delivered to a first device based on the media items determined to be available on the first device (investigates whether video data to be played is stored in its local disk, [0033]).

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter-Schleicher for generating revenue and reducing bandwidth requirements of a source server in a file sharing environment by utilizing a peer-to-peer method, the teachings of Son for a peer-to-peer network in which the client only receives the file from the server when it is not stored on another client. One would be motivated to combine these teaching because in doing so, a file is always available to a client from the server if no other client has it stored, while still significantly reducing distribution required from the server.

Regarding claim 55, wherein said plurality of devices includes a plurality of client devices having peer- to-peer connectivity to one another (Schleicher: secure and reliable peer-to-peer file sharing between client nodes, [0019]).

Regarding claim 56, said plurality of devices includes at least one server having copies of media items (Schleicher: server node stores content, [0022]) for supply to client devices (Schleicher: a file download by the client node from the server node, [0025]).

Regarding claim 57, wherein said step of selecting a particular media item (file) to be delivered to a first device (Kleinpeter: column 3 lines 44-46) includes selecting the first device to receive the particular media item from said plurality of devices (sources) (Kleinpeter: files partially downloaded from one source may be completed from another source, column 2 lines 9-10).

Regarding claim 59, wherein said step of selecting the first device includes comparing a priority list of a given device (video play service) with the media items determined to be available on the given device (investigates whether video data to be played is stored in its local disk), so as to evaluate need for delivery of a media item to the given device (Son: [0033]).

Regarding claim 60, comprising:

tracking measured performance of communications amongst said plurality of devices (Kleinpeter: the actual speed of the connection between server group and agent is determined rather than a default reported speed, column 5 lines 46-55).

Regarding claim 61, wherein said step of identifying at least one second device includes identifying at least one second device (agent) based, at least in part, on measured performance of communications between the first device and said at least one second device (Kleinpeter: server group to determine the optimal pair of agents with which to

establish a connection for an individual file transfer, column 5 lines 63-67 – column 6 lines 1-8).

Regarding claim 62, wherein said step of identifying at least one second device (user 10B) includes identifying said at least one second device (user 10B) (Kleinpeter: column 6 lines 57-67) based upon minimizing over-all system bandwidth requirements (Schleicher: taking advantage of idle bandwidth, [0013]).

Regarding claim 63, wherein said step of identifying at least one second device (30B) includes making transfers from client devices having a copy of the particular media item when feasible (Kleinpeter: column 3 lines 60-67), so as to conserve server resources (Kleinpeter: column 1 lines 36-40).

Regarding claim 64, wherein said step of identifying at least one second device (optimal source) includes identifying said at least one second device (optimal source) based upon minimizing time required to transfer the particular media item to the first device (based on the speed of the network connection between the client having that file locally stored) (Kleinpeter: column 2 lines 35-40).

Regarding claim 65, wherein said step of identifying at least one second device includes evaluating network location of the first device and said at least one second device

(Kleinpeter: a geographic check is made as to whether or not agents in the list share the same sub-net, network, or non-USA country code, column 6 lines 17-20).

Regarding claim 67, wherein said step of identifying at least one second device includes identifying a plurality of second devices, so as to share transfer of the particular media item amongst said plurality of second devices (Schleicher: delivery using multiple and partial file transfers, [0050]).

Regarding claim 68, wherein said step of transferring the particular media item to the first device (client node) includes transferring portions of the particular media item (file) from a plurality of second devices (nodes) (Schleicher: the client node downloads different portions of the file from different thus nodes, [0050]).

Regarding claim 69, wherein transferring portions of the particular media item (file) from a plurality of second devices (nodes) includes selecting a certain portion of a media item (1/3 of the file) to be delivered by a particular second device (Schleicher: downloading 1/3 of the file from three different nodes, [0050]).

Regarding claim 70, wherein said step of transferring the particular media item to the first device includes scheduling when the transfer should be initiated (Schleicher: users may schedule delivery of content over the network, [0019]).

Regarding claim 71, wherein said step of transferring the particular media item to the first device includes determining which device should initiate communications (active agent) for delivery of the particular media item to the first device (Kleinpeter: distinctions are made because some agents are behind firewalls and can only establish connections, column 7 lines 5-22).

Regarding claim 72, wherein said step of transferring the particular media item to the first device includes monitoring the transfer, so as to verify successful transfer of the particular media file to the first device (Kleinpeter: a client may say the transfer was successful, column 8 lines 64-67).

15. Claims 73-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinpeter-Schleicher-Son in view of Chiu.

Regarding claim 73, Kleinpeter-Schleicher-Son do not explicitly disclose verifying the transfer to confirm transfer of the correct copy of the particular media file to the first device.

Chiu teaches wherein the transferring step includes verifying the transfer, so as to confirm transfer of a correct copy of the particular media file to the first device (Chiu: verifies the content during and after transfer, [0016]).

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter-Schleicher-Son for generating revenue in

an efficient and reliable peer-to-peer network, the teachings of Chiu for utilizing a peer-to-peer method for distributing video-on-demand services, while maintaining a profile based on user-access history. One would be motivated to combine these teaching because in doing so, a better determination could be made of which files are popular and frequently requested, giving the server/provider information which would enable them to better judge which files to distribute to which clients.

Regarding claim 74, comprising: pre-loading media items on at least some of the plurality of devices (Chiu: head-end control system of SAN selects at least one end-user system, [0015]).

Regarding claim 75, wherein said pre-loading step includes pre-loading particular media items on a device based on user input (Chiu: system utilizes user-access history to pre-select or recommend content available on SAN, [0017]) at time of purchase of the device (when a user runs agent program for the first time) (Kleinpeter: column 5 lines 17-24) .

Regarding claim 76, wherein said pre-loading step includes pre-loading media items based, at least in part, on predicted demand for particular media items (Schleicher: specify which users should be targeted for which types of marketing content, [0028]).

16. Claims 58 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinpeter-Schleicher-Son in view of Perkes.

Regarding claim 58, Kleinpeter-Schleicher-Son do not disclose selecting the first device includes determining a device least-most recently served by delivery of a media item.

Perkes teaches wherein said step of selecting the first device includes determining a device least-most recently served by delivery of a media item (uses the history of recent logged activity and past history stored in the consumers' profile to determine the optimum time for the download, [0058]).

It would have been obvious to one of ordinary skill at the time of the claimed invention given the desirability of Kleinpeter-Schleicher-Son for generating revenue in an efficient and reliable peer-to-peer network, the teachings of Perkes for improved collecting, collating, organizing, analyzing and monetizing of information about a consumer's computer and peripheral device usage, while utilizing peer-to-peer broadcasting. One would be motivated to combine these teaching because doing so would enable providers and advertisers to deliver an increased volume of more refined, targeted content to more consumers while allowing users to utilize a wide range of peripherals and components connected to their computers.

Regarding claim 66, wherein said step of identifying at least one second device includes determining a device least-most recently transferring a media item (uses the history of

recent logged activity and past history stored in the consumers' profile to determine the optimum time for the download, [0058]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MADHU KHANNA whose telephone number is (571)270-3629. The examiner can normally be reached on Mon-Thurs 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beatriz Prieto can be reached on 571-272-3902. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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